IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

MFA.No. 599 of 1999()

WCC.136/1993 of W.C.C.,THRISSUR
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APPELLANT:

NATIONAL INSURANCE COMPANY LTD., GURUVAYUR,
REPRESENTED BY THE ASSISTANT MANAGER, REGIONAL OFFICE,
MUTHOOT TOWERS, KOCHI.

BY ADV. SRI.RAJAN P.KALLYATH

RESPONDENTS:
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1. T.KRISHNAN, S/O.THEYYAN, KULIYAD HOUSE,
MELARKODE, ALATHUR (VIA), PALAKKAD.

2. P.L.BABU, S/O.LONAPPAN, PALLISSERI HOUSE,
NEDUMBAL, THETTIPPALP.O., GURUVAYUR.

3. P.K.JACOB, POOVATHINGAL HOUSE,
OLLURKKARA, THRISSUR.

BY ADV. SRI.T.M.CHANDRAN
SRI.S.SUJITH
SRI.O.P.NANDAKUMAR
SRI.V.A.AJAI KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.3217 OF 1999 IN MFA.599 OF 1999:

DISMISSED.

Sd/-

24.10.2007 J.B.KOSHY, JUDGE

Sd/-

K.HEMA, JUDGE

. /TRUE COPY/

PA TO JUDGE

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.599 OF 1999

Dated this the 24th day of October, 2007

JUDGMENT

Koshy, J.

Insurance Company filed this appeal against the award of the Commissioner for Workmen's Compensation. The first respondent sustained injuries in an accident during the course of employment. As a result of the above, there was fracture tibia and fibula. He claimed that his monthly income was Rs.1,500/-. The Tribunal has taken only Rs.1,000/- because of the statutory limitation, as the accident occurred in 1992, before the amendment of the Act (Act 30 of 1995). The doctor certified that there is 25% permanent disability. It is true that during the oral evidence doctor said that the loss of earning capacity can be upto 75% and accordingly the Commissioner assessed compensation for 75%. We have gone through the disability certificate. The injury was only closed fracture tibia and fibula left leg lower third and lacerated wound 2 x 1 cm left leg front portion. We are of the view that the 25% disability assessed is on the high side. Even though the Commissioner has to assess the loss of earning capacity on the basis of the certificate issued by the

doctor, there is no written certificate by the doctor that the first respondent has 75% disability. Explanation II to Section 4(1)(c)(ii) of the Workmen's Compensation Act clearly says that the doctor cannot arbitrarily assess the loss of earning capacity. It should be proportionate to the injuries mentioned in the schedule. If that has taken into account, 25% disability assessed is on a higher side. Even if that is accepted, the compensation payable will be only:

$$1000 \times \frac{50}{100} \times 225.22 \times \frac{25}{100} \times = 28,153$$

He is also entitled to interest at 6% from the date of accident till the date of deposit. We also note that he was allowed to withdraw Rs.57,000/-. Considering the facts and circumstances of the case and the fact that the amount already disbursed might have been spent by the poor workman, no amount shall be recovered from the first respondent. However, the excess amount deposited should be refunded to the Insurance Company. The appeal is allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.599 OF 1999

JUDGMENT

24.10.2007